

SHB 1791 - S AMD 627

By Senators Padden, Kohl-Welles

ADOPTED 03/05/2014

1 On page 6, after line 13, insert the following:

2

3 "Sec. 3. RCW 9.68A.120 and 2009 c 479 s 12 are each amended to
4 read as follows:

5 The following are subject to seizure and forfeiture:

6 (1) All visual or printed matter that depicts a minor engaged in
7 sexually explicit conduct.

8 (2) All raw materials, equipment, and other tangible personal
9 property of any kind used or intended to be used to manufacture or
10 process any visual or printed matter that depicts a minor engaged in
11 sexually explicit conduct, and all conveyances, including aircraft,
12 vehicles, or vessels that are used or intended for use to transport,
13 or in any manner to facilitate the transportation of, visual or
14 printed matter in violation of RCW 9.68A.050 or 9.68A.060, but:

15 (a) No conveyance used by any person as a common carrier in the
16 transaction of business as a common carrier is subject to forfeiture
17 under this section unless it appears that the owner or other person in
18 charge of the conveyance is a consenting party or privy to a violation
19 of this chapter;

20 (b) No property is subject to forfeiture under this section by
21 reason of any act or omission established by the owner of the property
22 to have been committed or omitted without the owner's knowledge or
23 consent;

24 (c) A forfeiture of property encumbered by a bona fide security
25 interest is subject to the interest of the secured party if the
26 secured party neither had knowledge of nor consented to the act or
27 omission; and

1 (d) When the owner of a conveyance has been arrested under this
2 chapter the conveyance may not be subject to forfeiture unless it is
3 seized or process is issued for its seizure within ten days of the
4 owner's arrest.

5 (3) All personal property, moneys, negotiable instruments,
6 securities, or other tangible or intangible property furnished or
7 intended to be furnished by any person in exchange for visual or
8 printed matter depicting a minor engaged in sexually explicit conduct,
9 or constituting proceeds traceable to any violation of this chapter.

10 (4) Property subject to forfeiture under this chapter may be
11 seized by any law enforcement officer of this state upon process
12 issued by any superior court having jurisdiction over the property.
13 Seizure without process may be made if:

14 (a) The seizure is incident to an arrest or a search under a
15 search warrant or an inspection under an administrative inspection
16 warrant;

17 (b) The property subject to seizure has been the subject of a
18 prior judgment in favor of the state in a criminal injunction or
19 forfeiture proceeding based upon this chapter;

20 (c) A law enforcement officer has probable cause to believe that
21 the property is directly or indirectly dangerous to health or safety;
22 or

23 (d) The law enforcement officer has probable cause to believe that
24 the property was used or is intended to be used in violation of this
25 chapter.

26 (5) In the event of seizure under subsection (4) of this section,
27 proceedings for forfeiture shall be deemed commenced by the seizure.
28 The law enforcement agency under whose authority the seizure was made
29 shall cause notice to be served within fifteen days following the
30 seizure on the owner of the property seized and the person in charge
31 thereof and any person having any known right or interest therein, of
32 the seizure and intended forfeiture of the seized property. The
33 notice may be served by any method authorized by law or court rule
34 including but not limited to service by certified mail with return

1 receipt requested. Service by mail shall be deemed complete upon
2 mailing within the fifteen day period following the seizure.

3 (6) If no person notifies the seizing law enforcement agency in
4 writing of the person's claim of ownership or right to possession of
5 seized items within forty-five days of the seizure, the item seized
6 shall be deemed forfeited.

7 (7) If any person notifies the seizing law enforcement agency in
8 writing of the person's claim of ownership or right to possession of
9 seized items within forty-five days of the seizure, the person or
10 persons shall be afforded a reasonable opportunity to be heard as to
11 the claim or right. The hearing shall be before an administrative law
12 judge appointed under chapter 34.12 RCW, except that any person
13 asserting a claim or right may remove the matter to a court of
14 competent jurisdiction if the aggregate value of the article or
15 articles involved is more than five hundred dollars. The hearing
16 before an administrative law judge and any appeal therefrom shall be
17 under Title 34 RCW. In a court hearing between two or more claimants
18 to the article or articles involved, the prevailing party shall be
19 entitled to a judgment for costs and reasonable attorney's fees. The
20 burden of producing evidence shall be upon the person claiming to be
21 the lawful owner or the person claiming to have the lawful right to
22 possession of the seized items. The seizing law enforcement agency
23 shall promptly return the article or articles to the claimant upon a
24 determination by the administrative law judge or court that the
25 claimant is lawfully entitled to possession thereof of the seized
26 items.

27 (8) If property is sought to be forfeited on the ground that it
28 constitutes proceeds traceable to a violation of this chapter, the
29 seizing law enforcement agency must prove by a preponderance of the
30 evidence that the property constitutes proceeds traceable to a
31 violation of this chapter.

32 (9) When property is forfeited under this chapter the seizing law
33 enforcement agency may:

34

1 (a) Retain it for official use or upon application by any law
2 enforcement agency of this state release the property to that agency
3 for the exclusive use of enforcing this chapter or chapter 9A.88 RCW;

4 (b) Sell that which is not required to be destroyed by law and
5 which is not harmful to the public(~~(. The proceeds and all moneys
6 forfeited under this chapter shall be used for payment of all proper
7 expenses of the investigation leading to the seizure, including any
8 money delivered to the subject of the investigation by the law
9 enforcement agency, and of the proceedings for forfeiture and sale,
10 including expenses of seizure, maintenance of custody, advertising,
11 actual costs of the prosecuting or city attorney, and court costs.
12 Fifty percent of the money remaining after payment of these expenses
13 shall be deposited in the state general fund and fifty percent shall
14 be deposited in the general fund of the state, county, or city of the
15 seizing law enforcement agency))~~); or

16 (c) Request the appropriate sheriff or director of public safety
17 to take custody of the property and remove it for disposition in
18 accordance with law.

19 (10)(a) By January 31st of each year, each seizing agency shall remit
20 to the state treasurer an amount equal to ten percent of the net
21 proceeds of any property forfeited during the preceding calendar year.
22 Money remitted shall be deposited in the prostitution prevention and
23 intervention account under RCW 43.63A.740.

24 (b) The net proceeds of forfeited property is the value of the
25 forfeitable interest in the property after deducting the cost of
26 satisfying any bona fide security interest to which the property is
27 subject at the time of seizure; and in the case of sold property,
28 after deducting the cost of sale, including reasonable fees or
29 commissions paid to an independent selling agency.

30 (c) The value of sold forfeited property is the sale price. The
31 value of retained forfeited property is the fair market value of the
32 property at the time of seizure determined when possible by reference
33 to an applicable commonly used index. A seizing agency may use, but
34 need not use, an independent qualified appraiser to determine the

1 value of retained property. If an appraiser is used, the value of the
2 property appraised is net of the cost of the appraisal. The value of
3 destroyed property and retained firearms or illegal property is zero.

4 (11) Forfeited property and net proceeds not required to be paid
5 to the state treasurer under this chapter shall be used for payment of
6 all proper expenses of the investigation leading to the seizure,
7 including any money delivered to the subject of the investigation by
8 the law enforcement agency, and of the proceedings for forfeiture and
9 sale, including expenses of seizure, maintenance of custody,
10 advertising, actual costs of the prosecuting or city attorney, and
11 court costs. Money remaining after payment of these expenses shall be
12 retained by the seizing law enforcement agency for the exclusive use
13 of enforcing the provisions of this chapter or chapter 9A.88 RCW.

14
15 **Sec. 4.** RCW 9A.88.150 and 2012 c 140 s 1 are each amended to read
16 as follows:

17 (1) The following are subject to seizure and forfeiture and no
18 property right exists in them:

19 (a) Any property or other interest acquired or maintained in
20 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070 to the extent of
21 the investment of funds, and any appreciation or income attributable
22 to the investment, from a violation of RCW 9.68A.100, 9.68A.101, or
23 9A.88.070;

24 (b) All conveyances, including aircraft, vehicles, or vessels,
25 which are used, or intended for use, in any manner to facilitate a
26 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, except that:

27 (i) No conveyance used by any person as a common carrier in the
28 transaction of business as a common carrier is subject to forfeiture
29 under this section unless it appears that the owner or other person in
30 charge of the conveyance is a consenting party or privy to a violation
31 of RCW 9.68A.100, 9.68A.101, or 9A.88.070;

32 (ii) No conveyance is subject to forfeiture under this section by
33 reason of any act or omission established by the owner thereof to have
34 been committed or omitted without the owner's knowledge or consent;

1 (iii) A forfeiture of a conveyance encumbered by a bona fide
2 security interest is subject to the interest of the secured party if
3 the secured party neither had knowledge of nor consented to the act or
4 omission; and

5 (iv) When the owner of a conveyance has been arrested for a
6 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, the conveyance in
7 which the person is arrested may not be subject to forfeiture unless
8 it is seized or process is issued for its seizure within ten days of
9 the owner's arrest;

10 (c) Any property, contractual right, or claim against property
11 used to influence any enterprise that a person has established,
12 operated, controlled, conducted, or participated in the conduct of, in
13 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070;

14 (d) All proceeds traceable to or derived from an offense defined
15 in RCW 9.68A.100, 9.68A.101, or 9A.88.070 and all moneys, negotiable
16 instruments, securities, and other things of value significantly used
17 or intended to be used significantly to facilitate commission of the
18 offense;

19 (e) All books, records, and research products and materials,
20 including formulas, microfilm, tapes, and data which are used, or
21 intended for use, in violation of RCW 9.68A.100, 9.68A.101, or
22 9A.88.070;

23 (f) All moneys, negotiable instruments, securities, or other
24 tangible or intangible property of value furnished or intended to be
25 furnished by any person in exchange for a violation of RCW 9.68A.100,
26 9.68A.101, or 9A.88.070, all tangible or intangible personal property,
27 proceeds, or assets acquired in whole or in part with proceeds
28 traceable to an exchange or series of exchanges in violation of RCW
29 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys, negotiable
30 instruments, and securities used or intended to be used to facilitate
31 any violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070. A forfeiture
32 of money, negotiable instruments, securities, or other tangible or
33 intangible property encumbered by a bona fide security interest is
34 subject to the interest of the secured party if, at the time the

1 security interest was created, the secured party neither had knowledge
2 of nor consented to the act or omission. No personal property may be
3 forfeited under this subsection (1)(f), to the extent of the interest
4 of an owner, by reason of any act or omission, which that owner
5 establishes was committed or omitted without the owner's knowledge or
6 consent; and

7 (g) All real property, including any right, title, and interest in
8 the whole of any lot or tract of land, and any appurtenances or
9 improvements which are being used with the knowledge of the owner for
10 a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, or which have
11 been acquired in whole or in part with proceeds traceable to an
12 exchange or series of exchanges in violation of RCW 9.68A.100,
13 9.68A.101, or 9A.88.070, if a substantial nexus exists between the
14 violation and the real property. However:

15 (i) No property may be forfeited pursuant to this subsection
16 (1)(g), to the extent of the interest of an owner, by reason of any
17 act or omission committed or omitted without the owner's knowledge or
18 consent;

19 (ii) A forfeiture of real property encumbered by a bona fide
20 security interest is subject to the interest of the secured party if
21 the secured party, at the time the security interest was created,
22 neither had knowledge of nor consented to the act or omission.

23 (2) Real or personal property subject to forfeiture under this
24 section may be seized by any law enforcement officer of this state
25 upon process issued by any superior court having jurisdiction over the
26 property. Seizure of real property shall include the filing of a lis
27 pendens by the seizing agency. Real property seized under this
28 section shall not be transferred or otherwise conveyed until ninety
29 days after seizure or until a judgment of forfeiture is entered,
30 whichever is later: PROVIDED, That real property seized under this
31 section may be transferred or conveyed to any person or entity who
32 acquires title by foreclosure or deed in lieu of foreclosure of a
33 security interest. Seizure of personal property without process may
34 be made if:

1 (a) The seizure is incident to an arrest or a search under a
2 search warrant;

3 (b) The property subject to seizure has been the subject of a
4 prior judgment in favor of the state in a criminal injunction or
5 forfeiture proceeding; or

6 (c) The law enforcement officer has probable cause to believe that
7 the property was used or is intended to be used in violation of RCW
8 9.68A.100, 9.68A.101, or 9A.88.070.

9 (3) In the event of seizure pursuant to subsection (2) of this
10 section, proceedings for forfeiture shall be deemed commenced by the
11 seizure. The law enforcement agency under whose authority the seizure
12 was made shall cause notice to be served within fifteen days following
13 the seizure on the owner of the property seized and the person in
14 charge thereof and any person having any known right or interest
15 therein, including any community property interest, of the seizure and
16 intended forfeiture of the seized property. Service of notice of
17 seizure of real property shall be made according to the rules of civil
18 procedure. However, the state may not obtain a default judgment with
19 respect to real property against a party who is served by substituted
20 service absent an affidavit stating that a good faith effort has been
21 made to ascertain if the defaulted party is incarcerated within the
22 state, and that there is no present basis to believe that the party is
23 incarcerated within the state. Notice of seizure in the case of
24 property subject to a security interest that has been perfected by
25 filing a financing statement, or a certificate of title, shall be made
26 by service upon the secured party or the secured party's assignee at
27 the address shown on the financing statement or the certificate of
28 title. The notice of seizure in other cases may be served by any
29 method authorized by law or court rule including, but not limited to,
30 service by certified mail with return receipt requested. Service by
31 mail shall be deemed complete upon mailing within the fifteen day
32 period following the seizure.

33 (4) If no person notifies the seizing law enforcement agency in
34 writing of the person's claim of ownership or right to possession of

1 items specified in subsection (1) of this section within forty-five
2 days of the service of notice from the seizing agency in the case of
3 personal property and ninety days in the case of real property, the
4 item seized shall be deemed forfeited. The community property
5 interest in real property of a person whose spouse or domestic partner
6 committed a violation giving rise to seizure of the real property may
7 not be forfeited if the person did not participate in the violation.

8 (5) If any person notifies the seizing law enforcement agency in
9 writing of the person's claim of ownership or right to possession of
10 items specified in subsection (1) of this section within forty-five
11 days of the service of notice from the seizing agency in the case of
12 personal property and ninety days in the case of real property, the
13 person or persons shall be afforded a reasonable opportunity to be
14 heard as to the claim or right. The notice of claim may be served by
15 any method authorized by law or court rule including, but not limited
16 to, service by first-class mail. Service by mail shall be deemed
17 complete upon mailing within the forty-five day period following
18 service of the notice of seizure in the case of personal property and
19 within the ninety day period following service of the notice of
20 seizure in the case of real property. The hearing shall be before the
21 chief law enforcement officer of the seizing agency or the chief law
22 enforcement officer's designee, except where the seizing agency is a
23 state agency as defined in RCW 34.12.020(4), the hearing shall be
24 before the chief law enforcement officer of the seizing agency or an
25 administrative law judge appointed under chapter 34.12 RCW, except
26 that any person asserting a claim or right may remove the matter to a
27 court of competent jurisdiction. Removal of any matter involving
28 personal property may only be accomplished according to the rules of
29 civil procedure. The person seeking removal of the matter must serve
30 process against the state, county, political subdivision, or
31 municipality that operates the seizing agency, and any other party of
32 interest, in accordance with RCW 4.28.080 or 4.92.020, within
33 forty-five days after the person seeking removal has notified the
34 seizing law enforcement agency of the person's claim of ownership or

1 right to possession. The court to which the matter is to be removed
2 shall be the district court when the aggregate value of personal
3 property is within the jurisdictional limit set forth in RCW 3.66.020.
4 A hearing before the seizing agency and any appeal therefrom shall be
5 under Title 34 RCW. In all cases, the burden of proof is upon the law
6 enforcement agency to establish, by a preponderance of the evidence,
7 that the property is subject to forfeiture.

8 The seizing law enforcement agency shall promptly return the
9 article or articles to the claimant upon a determination by the
10 administrative law judge or court that the claimant is the present
11 lawful owner or is lawfully entitled to possession thereof of items
12 specified in subsection (1) of this section.

13 (6) In any proceeding to forfeit property under this title, where
14 the claimant substantially prevails, the claimant is entitled to
15 reasonable attorneys' fees reasonably incurred by the claimant. In
16 addition, in a court hearing between two or more claimants to the
17 article or articles involved, the prevailing party is entitled to a
18 judgment for costs and reasonable attorneys' fees.

19 (7) When property is forfeited under this chapter, the seizing law
20 enforcement agency (~~shall sell the property that is not required to~~
21 ~~be destroyed by law and that is not harmful to the public~~) may:

22 (a) Retain it for official use or upon application by any law
23 enforcement agency of this state release the property to that agency
24 for the exclusive use of enforcing this chapter or chapter 9.68A RCW;

25 (b) Sell that which is not required to be destroyed by law and
26 which is not harmful to the public; or

27 (c) Request the appropriate sheriff or director of public safety
28 to take custody of the property and remove it for disposition in
29 accordance with law.

30 (8)(a) When property is forfeited, the seizing agency shall keep a
31 record indicating the identity of the prior owner, if known, a
32 description of the property, the disposition of the property, the
33 value of the property at the time of seizure, and the amount of
34 proceeds realized from disposition of the property.

1 (b) Each seizing agency shall retain records of forfeited property
2 for at least seven years.

3 (c) Each seizing agency shall file a report including a copy of
4 the records of forfeited property with the state treasurer each
5 calendar quarter.

6 (d) The quarterly report need not include a record of forfeited
7 property that is still being held for use as evidence during the
8 investigation or prosecution of a case or during the appeal from a
9 conviction.

10 (9)(a) By January 31st of each year, each seizing agency shall
11 remit to the state treasurer an amount equal to ten percent of the net
12 proceeds of any property forfeited during the preceding calendar year.
13 Money remitted shall be deposited in the prostitution prevention and
14 intervention account under RCW 43.63A.740.

15 (b) The net proceeds of forfeited property is the value of the
16 forfeitable interest in the property after deducting the cost of
17 satisfying any bona fide security interest to which the property is
18 subject at the time of seizure; and in the case of sold property,
19 after deducting the cost of sale, including reasonable fees or
20 commissions paid to independent selling agents, and the cost of any
21 valid landlord's claim for damages under subsection ~~((+11+))~~ (12) of
22 this section.

23 (c) The value of sold forfeited property is the sale price. The
24 value of destroyed property and retained firearms or illegal property
25 is zero.

26 (10) Net proceeds not required to be paid to the state treasurer
27 shall be used for payment of all proper expenses of the investigation
28 leading to the seizure, including any money delivered to the subject
29 of the investigation by the law enforcement agency, and of the
30 proceedings for forfeiture and sale, including expenses of seizure,
31 maintenance of custody, advertising, actual costs of the prosecuting
32 or city attorney, and court costs. Money remaining after payment of
33 these expenses shall be retained by the seizing law enforcement agency
34 for the exclusive use of enforcing the provisions of this chapter or

1 chapter 9.68A RCW.

2 (11) Upon the entry of an order of forfeiture of real property,
3 the court shall forward a copy of the order to the assessor of the
4 county in which the property is located. Orders for the forfeiture of
5 real property shall be entered by the superior court, subject to court
6 rules. Such an order shall be filed by the seizing agency in the
7 county auditor's records in the county in which the real property is
8 located.

9 ~~((11))~~ (12) A landlord may assert a claim against proceeds from
10 the sale of assets seized and forfeited under subsection (9) of this
11 section, only if:

12 (a) A law enforcement officer, while acting in his or her official
13 capacity, directly caused damage to the complaining landlord's
14 property while executing a search of a tenant's residence;

15 (b) The landlord has applied any funds remaining in the tenant's
16 deposit, to which the landlord has a right under chapter 59.18 RCW, to
17 cover the damage directly caused by a law enforcement officer prior to
18 asserting a claim under the provisions of this section:

19 (i) Only if the funds applied under (b) of this subsection are
20 insufficient to satisfy the damage directly caused by a law
21 enforcement officer, may the landlord seek compensation for the damage
22 by filing a claim against the governmental entity under whose
23 authority the law enforcement agency operates within thirty days after
24 the search;

25 (ii) Only if the governmental entity denies or fails to respond to
26 the landlord's claim within sixty days of the date of filing, may the
27 landlord collect damages under this subsection by filing within thirty
28 days of denial or the expiration of the sixty day period, whichever
29 occurs first, a claim with the seizing law enforcement agency. The
30 seizing law enforcement agency must notify the landlord of the status
31 of the claim by the end of the thirty day period. Nothing in this
32 section requires the claim to be paid by the end of the sixty day or
33 thirty day period; and

34

1 (c) For any claim filed under (b) of this subsection, the law
2 enforcement agency shall pay the claim unless the agency provides
3 substantial proof that the landlord either:

4 (i) Knew or consented to actions of the tenant in violation of RCW
5 9.68A.100, 9.68A.101, or 9A.88.070; or

6 (ii) Failed to respond to a notification of the illegal activity,
7 provided by a law enforcement agency under RCW 59.18.075, within seven
8 days of receipt of notification of the illegal activity.

9 ~~((+12))~~ (13) The landlord's claim for damages under subsection
10 ~~((+11))~~ (12) of this section may not include a claim for loss of
11 business and is limited to:

12 (a) Damage to tangible property and clean-up costs;

13 (b) The lesser of the cost of repair or fair market value of the
14 damage directly caused by a law enforcement officer;

15 (c) The proceeds from the sale of the specific tenant's property
16 seized and forfeited under subsection (9) of this section; and

17 (d) The proceeds available after the seizing law enforcement
18 agency satisfies any bona fide security interest in the tenant's
19 property and costs related to sale of the tenant's property as
20 provided by subsection ~~((+11))~~ (12) of this section.

21 ~~((+13))~~ (14) Subsections ~~((+11))~~ (12) and ~~((+12))~~ (13) of
22 this section do not limit any other rights a landlord may have
23 against a tenant to collect for damages. However, if a law
24 enforcement agency satisfies a landlord's claim under subsection
25 ~~((+11))~~ (12) of this section, the rights the landlord has against
26 the tenant for damages directly caused by a law enforcement officer
27 under the terms of the landlord and tenant's contract are subrogated
28 to the law enforcement agency."

29

30 Correct the title.

31

EFFECT: Creates uniform guidelines for the disposition of
proceeds of seizure and forfeiture actions, when the property is
forfeited because of its associations with Child Pornography, Sexual
Exploitation of a Minor, or Promoting Prostitution in the first
degree.

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